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In Re:) Bankruptcy Case No.
) 04-61370-fra7
WAYNE S. RIVERA,)
)
) MEMORANDUM OPINION
)
Debtor.)

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PAGE 1 - MEMORANDUM OPINION

1 self-employed, with the wife's income somewhat higher than the
2 Debtor's.

3 When the Court learned that the dissolution petition had been
4 filed, it proposed, in open court, to enter an order modifying the
5 stay. The Trustee objected. The court then entered an order to
6 show cause why the proposed order should not be entered, and a
7 hearing was held on August 26, 2004.

8 II. APPLICABLE LAW

9 A. 11 U.S.C. § 362

10 Bankruptcy Code § 362 provides that a petition for relief
11 operates as a stay of:

12 (1) the commencement or continuation, including
13 the issuance or employment of process, of a judicial,
14 administrative, or other action or proceeding against
15 the debtor that was or could have been commenced
16 before the commencement of the case under this title,
or to recover a claim against the debtor that arose
before the commencement of the case under this title;

16 * * *

17 (3) any act to obtain possession of property of
18 the estate or of property from the estate or to
exercise control over property of the estate;

19 (4) any act to create, perfect, or enforce any
20 lien against property of the estate;

21 (5) any act to create, perfect, or enforce
22 against property of the debtor any lien to the extent
that such lien secures a claim that arose before the
commencement of the case under this title;

23 (6) any act to collect, assess, or recover a
24 claim against the debtor that arose before the
commencement of the case under this title;

25 Section 362 (b) excludes from the automatic stay commencement
26 or continuation of an action to establish paternity or to establish

1 or modify an order for alimony, maintenance or support, or the
2 collection of alimony, maintenance or support from property that is
3 not property of the estate.

4 B. Oregon Revised Statutes Chapter 107

5 Statutes governing the dissolution of marriages in Oregon are
6 set out in Oregon Revised Statutes Ch. 107. Dissolution proceedings
7 are subject to the jurisdiction of the Circuit Court, which is
8 Oregon's only trial level court. The court is charged with
9 dissolving the marriage, providing for the future care and custody
10 of the parties' children, awards of child support and spousal
11 support and, where appropriate, division of the parties' property.

12 Respecting property of the parties, ORS 107.105 provides, in
13 pertinent part:

14 (1) Whenever the court renders a judgment of marital
15 annulment, dissolution, or separation, the court may
provide in the judgment:

* * *

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17 (f) For the division or other disposition between the
18 parties of the real or personal property, or both, of
19 either or both of the parties as may be just and
20 proper in all the circumstances....The court shall
21 consider the contribution of a spouse as a homemaker
22 as a contribution to the acquisition of marital
23 assets. There is a rebuttable presumption that both
24 spouses have contributed equally to the acquisition of
25 property during the marriage, whether such property is
26 jointly or separately held. *Subsequent to the filing
of a petition for annulment or dissolution of marriage
or separation, the rights of the parties in the
marital assets shall be considered a species of
coownership, and a transfer of marital assets under a
judgment of annulment or dissolution of marriage or of
separation...shall be considered a partitioning of
jointly owned property. [emphasis added]*

1 In order to make its determination, the Circuit Court must
2 weigh a number of factors, and must consider the effect of each
3 element of the dissolution in relation to others made in the decree
4 of dissolution. For example, in assessing the need for spousal
5 support, the court must consider other financial provisions of the
6 judgment of dissolution: none can be considered in isolation. ORS
7 107.105(1)(d); Matter of the Marriage of Smith & Smith, 168 Or.App.
8 349, 354, 7 P.3d 559 (2000); Matter of the Marriage of Vanwinkle &
9 Vanwinkle, 169 Or.App. 1030, 10 P.3d 306 (2000); Matter of the
10 Marriage of Grove & Grove, 280 Or. 341, 571 P.2d 477 (1977). The
11 placement of minor children may affect the distribution of property.
12 Specifically, Oregon courts generally will award to the spouse
13 awarded custody of minor children the parties' residence, subject to
14 an appropriate co-tenancy or offsetting judgment. Marriage of
15 Vanderzanden, 51 Or. App. 757, 627 P.2d 18 (1981).

16 III. DISCUSSION

17 The Trustee maintains that the petition for dissolution
18 violates the automatic stay, and is therefore void and of no effect.
19 It is clear that the automatic stay does not prevent dissolution of
20 a marriage, or provisions for custody or support of children. What
21 is less clear is the effect of the dissolution petition on the
22 parties' property, and whether the subsequent treatment of the
23 Debtor's (and thus the estate's) interest in property as a "species
24 of joint tenancy" is prohibited by the automatic stay.

25 The initiation of a dissolution of marriage proceeding under
26 Oregon law does not, by itself, violate any of the provisions of

1 Code § 362(a), with the possible exception of subsection (3). The
2 divorcing partner is not, when seeking a distribution of property,
3 enforcing a claim. A dissolution is not a proceeding by a creditor
4 versus debtor, but a distribution of assets according to applicable
5 law. ORS 107.105(f). It follows that the dissolution proceeding
6 should not be deemed stayed as, for example, "an act to collect,
7 assess or recover a claim against the debtor that arose before the
8 commencement of the case...."

9 If the commencement of a dissolution case somehow alters the
10 property rights of the debtor (and thus the estate) at the time the
11 dissolution petition is filed, it might be said to be a violation of
12 the stay to the extent it is "an act to obtain possession of
13 property of the estate or of property from the estate or to exercise
14 control over property of the estate." § 362(a)(3). However, ORS
15 107.105 does not actually alter any pre-existing rights; what it
16 does is establish an analytical framework for implementing rights
17 that existed from the outset of the marriage. By providing that
18 "the rights of the parties in the marital assets shall be considered
19 a species of coownership," the legislature is not mandating a change
20 in the rights of the parties, but directing the Circuit Court to
21 carry out the state's policy that marital assets be equitably
22 divided. In other words, commencement of the dissolution proceeding
23 does not modify the property rights of either party, or create new
24 ones: it simply puts into play the right of a spouse to an equitable

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1 distribution in the event the marriage fails.¹ This does not, by
2 itself, violate § 362.

3 Of course, what does violate the automatic stay is entry of a
4 judgment which actually purports to distribute property of the
5 estate. That being the case, simultaneous proceedings in bankruptcy
6 and to dissolve the marriage of a debtor results in gridlock. The
7 Circuit Court is prohibited from distributing marital property, but
8 is unable to make provision for support or custody without
9 considering property division. The trustee in bankruptcy cannot
10 administer the property because it remains subject to the
11 (undetermined) rights of the non-debtor spouse.

12 The Trustee believes that the divorce should be allowed to
13 proceed without consideration of property distribution, which should
14 be handled by the Bankruptcy Court. This is problematical in many
15 respects:

16 First, as indicated, the Circuit Court must take property
17 distribution into account, and therefore necessarily would have to
18 wait until the Bankruptcy Court effects a distribution of the
19 marital property. This in turn means that the Bankruptcy Court will
20 have an undue influence on issues of custody and support. Moreover,
21 the Bankruptcy Court may be hard pressed to distribute the property
22 if it is required by state law to consider the custody of children
23 in determining the fate of a marital residence.

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25 ¹ A marriage may be dissolved in Oregon when "irreconcilable
26 differences between the parties have caused the irremediable
breakdown of the marriage." ORS 107.025.

1 Second, there is a well settled doctrine that federal courts
2 should not involve themselves in domestic relations cases. In re
3 Haluh, 25 B.R. 617 (Bankr. C.D. Cal. 1982). The case law does not
4 distinguish between various aspects of domestic relations law, and
5 it must be presumed that federal courts have determined that they
6 shall not participate in any aspect of it.

7 State courts, by contrast, have developed particular skills
8 and rules allowing them to efficiently carry out their duties under
9 Chapter 107. Note, in particular, provisions in the Oregon Uniform
10 Trial Court Rules providing for documentation of the parties'
11 property, in order for the Circuit Court at trial to make an
12 efficient determination of how property should be distributed. UTCR
13 Ch. 8.

14 The Trustee voiced a concern at oral argument that the Debtor
15 and his wife might agree to a collusive marital settlement agreement
16 or decree of dissolution, awarding all of the marital property to
17 her to the detriment of the Debtor/husband's creditors. The Trustee
18 presents no evidence of the parties' intention to do this. In any
19 case, relief from the automatic stay can be fashioned to condition
20 the parties' right to proceed in the dissolution on assuring the
21 Trustee's right to protect the interests of creditors. There is no
22 reason to believe that the Circuit Court would not give creditors
23 whatever consideration the law requires, as would this court. The
24 point is that the law governing such determinations is the same in
25 either forum.

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1 Accordingly, the order the Court will enter requires that any
2 proposed settlement be disclosed to the Trustee before it is
3 submitted to the Circuit Court. It further provides that relief
4 from the automatic stay, and the Circuit Court's authority to enter
5 a judgment, is specifically conditioned on the Trustee's right to
6 intervene in the dissolution proceeding to protect the interests of
7 creditors.


8 The Trustee suggests that the Bankruptcy Court is the
9 appropriate forum for determining property issues, because it is
10 more convenient for creditors, and, perhaps, more likely to take the
11 interests of creditors into account. However, the interests of the
12 parties in property, and hence the interests of the estate, are
13 governed by state law. This court is not aware of any federal
14 doctrine which says that the interests of creditors take precedence
15 over the interests of the debtor's family or dependents. When the
16 marriage of a debtor in bankruptcy is to be dissolved, Oregon law
17 requires that the debtor's and his spouse's property be equitably
18 divided, and the Trustee takes subject to that law. It follows
19 that, at least in the absence of proof that the petition for
20 dissolution is a sham, the parties should be allowed to complete the
21 dissolution of their marriage, including the distribution of marital
22 property, before the Trustee proceeds to administer assets of the
23 estate.

24 As for the legal rights of creditors to marital property, it
25 may be said that the statutory command to divide property in a
26 manner that is "just and proper in all the circumstances" requires

1 justice to the parties' creditors as well as to the parties
2 themselves. The court has found no Oregon cases discussing this
3 point - all the more reason to defer the division of property to
4 state courts to allow the law to develop in that forum.

5 IV. CONCLUSION

6 The rights of parties, and their creditors, in the assets of
7 a failed marriage are determined by state law, which requires that
8 the Circuit Court divide and distribute the property. This process
9 requires consideration of all other elements of the dissolution
10 process. This can only be done in a single proceeding. The only
11 court empowered to do so is the Circuit Court. Accordingly, an
12 order will be entered modifying the automatic stay to allow the
13 dissolution case to proceed in the Circuit Court.

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17 FRANK R. ALLEY, III
18 Bankruptcy Judge
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